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JUDGEMENT

**Course Materials
2002-2003**

Professor Jennifer Nedelsky

**Faculty of Law
University of Toronto**

***** These Materials are for the sole use of students of the Faculty of Law,
University of Toronto**

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FACULTY OF LAW
UNIVERSITY OF TORONTO

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JUDGEMENT COURSE MATERIALS

2002

Beiner, <u>Political Judgement</u> Ch 2	1
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<i>R v. R.D.S.</i> , SCC September 26, 1997	29
Beiner, <u>Political Judgement</u> ch 3 (optional reading)	73
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Arendt, <u>Lectures</u> pp.vii – p.51	197
Kant, <u>Critique of Judgement</u> ss. 6-8	226
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Disch, “Please Sit Down...”	268
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JUDGEMENT SEMINAR

POL 2023; LAW 372F

FALL 2002

PROFESSOR NEDELSKY

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This course explores the nature of the human faculty of judgement. We will be looking at the connections and differences between the judgements we make every day (is it a good course, book, movie) and moral, political and legal judgements.

There are two different kinds of problems our exploration will try to address. The first arises out of feminist theory, critical legal theory and a variety of other contemporary approaches to law. In all of these approaches that has been an emphasis on the importance of recognizing the multiplicity of different "voices" in our diverse society. Our legal system, like all of our institutions, has presupposed an unitary framework of discourse to which all who want to participate must conform.

The call to recognize difference and make it possible to everyone's voice to be heard is a positive move. But it poses problems that are still to be worked out. A judge can adjudicate between two sides of a story when the story has a recognizable unity, that is when both sides have fit into a common framework. But if we no longer try to force diverse perspectives into the dominant framework, judges will be faces with truly incommensurable stories. (This already sometimes happens in cases of rape, sexual harassment and "hate speech.") How are we to judge between them? A related question arise with respect to the conventional virtues of judicial judgment: neutrality, impartiality, objectivity. What becomes of these virtues, how do we need to reconceptualize them, when we recognize the role of passion in knowledge and the inevitability of perspective in understanding? A large part of the project of the course is to see the ways philosophical writings on the nature of judgement may be able to help us solve these pressing problems. Two of the common themes that link the philosophical and contemporary legal arguments are the role of story telling or narrative and the role of common sense in judgement.

The second problem is a long standing one: is there something distinctive about the legal form of judgement that justifies (or requires) the institutional forms we have developed for judicial decision making. This problem involves not only the "undemocratic" nature of courts, but the particular norms of discourse that we think of as "legal." If we have a better understanding of what judging consists of, and what foster good judgement, then we can do a better job of thinking about the appropriate institutions, norms and practices of law. Since many of the readings address themselves to the question of political and moral judgement, we will have to ask whether there is reason to believe that legal or judicial judgement involves something different.

COURSE REQUIREMENTS: Class participation and bi-weekly one page "comments" (25%) and a 25 page paper (75%) (last date for written work, NOON).

REQUIRED READING: Materials to be purchased through the Law School Bookstore and Judgment, Imagination and Politics, Ronald Beiner and Jennifer Nedelsky, eds available at the Toronto Women's Bookstore, Harbord Street just west of Spadina

Week 1. Introduction

Week 2. Beiner, Political Judgment Ch 2, in Materials (noted as M); Hannah Arendt, "The Crisis in Culture" Part II, (Part I optional) from Between Past and Future, in Beiner and Nedelsky, Judgment, Imagination and Politics, noted as JIP; Nedelsky, SSHRC Proposal (M); R.D.S. case, SCC September 26, 1997(M). Come to class with an example of a problem of judgement and thoughts on how these preliminary readings help us reflect on it.
Group 1, comment; Group 2, respond

Week 3. Beiner, Ch. ,4, 5, 6 (Ch. 3 optional) (M)
Group 2 comment, group 3 respond.

Week 4. Arendt, Lectures, pp. vii - p.51; Kant, Critique of Judgment, s 6-8, Werner Pluhar, translator (Hackett,1987).(M)
Group 3 comment, group 4 respond.

Week 5. Arendt, Lectures, p. 51-85 (M), Bilsky, "When Actor and Spectator Meet in the Courtroom: Reflections on Hannah Arendt's Concept of Judgment" JIP
Group 4 comment, group 1 respond.

Week 6. Beiner, "Rereading Hannah Arendt's Kant Lectures"; Nedelsky, "Judgment, Diversity and Relational Autonomy" JIP; Kant, Critique of Judgment, ss 31-42
Group 1 comment, group 2 respond. **ATTENTION: HEAVY READING, START EARLY**

Week 7. Seyla Benhabib, "Judgment and the Moral Foundations of Politics in Hannah Arendt's Thought,"; Iris Marion Young, "Asymmetrical Reciprocity: On Moral Respect, Wonder, and Enlarged Thought," JIP
Group 2 comment, group 3 respond

- Week 8. Lisa Disch, "Please Sit Down, but Don't Make Yourself at Home": Arendtian 'Visiting' and the Prefigurative Politics of Consciousness Raising," and Nancy Fraser, "Communication, Transformation, and Consciousness Raising" in Hannah Arendt and the Meaning of Politics, Craig Calhoun and John McGowan, eds. **M**
Group 3 comment, group 4 respond
- Week 9. Kim Lane Scheppele, "Just the Facts, Ma'am: Sexualized Violence, Evidentiary Habits, and the Revision of Truth," Maria Lugones, "Playfulness, 'World'-Travelling, and Loving Perception," *Hypatia* 2:3-17 (Summer, 1987). **M**
Group 4 comment, group 1 respond
- Week 10. Nedelsky, "Embodied Diversity: Challenges to Law," 42 *McGill Law Journal* 91 (1997) **JIP**; Sarah Hoagland, Lesbian Ethics, "Anger and Political Perception," p.178-184 and "Integrating Reasons and Emotions," pp.157-164; R.D.S. case.**M**
Group 1, group 2 respond
- Week 11. Kirstie M. McClure, "The Odor of Judgment: Exemplarity, Propriety, and Politics in the Company of Hannah Arendt" in Calhoun and McGowan **M**, and Albrecht Wellmer, "Hannah Arendt on Judgment: The Unwritten Doctrine of Reason"**JIP**
Group 2 comment, Group 3 respond
- Week 12. Onora O'Neill, Constructions of Reason: Explorations of Kant's Practical Philosophy, ch. 9, "The Power of Example" (Cambridge University Press, 1990) and Barbara Herman, "The Practice of Moral Judgment," *The Journal of Philosophy*, (1985) **M**
Group 3 comment, Group 4 respond
- Week 13. Nedelsky, "Communities of Judgment and Human Rights," **M** and George Kateb, "The Judgment of Arendt"**JIP**
Group 4 comment, group 1 respond

